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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 STEVEN ANTHONY GUZMAN,

11 Petitioner,

No. CIV S-04-0700 FCD GGH P

12 vs.

13 A. LAMARQUE, Warden,

14 Respondent.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
17 this court's denial April 24, 2009, denial of his application for a writ of habeas corpus. Before
18 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
19 Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
22 § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues
23 satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

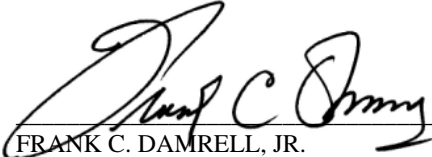
24 A certificate of appealability should be granted for any issue that petitioner can
25 demonstrate is "debatable among jurists of reason," could be resolved differently by a different
26 court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the denial of a constitutional right in
3 the following issues presented in the instant petition: 1) whether due process was violated by
4 imposition of a 31-year-to-life sentence when the trial court only advised petitioner, at the time
5 of his no-contest plea to voluntary manslaughter by use of a knife, that his maximum sentence
6 could be 25 years to life; 2) whether petitioner was subjected to ineffective assistance of counsel
7 with regard to imposition of the sentence; 3) whether sufficient evidence supported the trial
8 court's finding that petitioner was sane at the time of the offense.

9 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
10 issued in the present action.

11 DATED: May 21, 2009.

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13 FRANK C. DAMRELL, JR.
14 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the
26 standard for issuance of a certificate of appealability is the same as the standard that applied to
issuance of a certificate of probable cause. Jennings, at 1010.